

DRAFT

**AMENDMENT TO AGREEMENT 1**  
**FOR CONSULTATION AND OTHER SERVICES**

This Amendment is entered into this 7<sup>th</sup> day of June 2006, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and Chong Partners Architecture (hereafter referred to as "CONSULTANT").

**RECITALS**

WHEREAS, the parties entered into an Agreement for professional design services for the Midtown East and West Parking Garage (Project No. 8161) with a total compensation for Basic Services, Additional Services, Reimbursable Services, and Contingency not to exceed \$1,831,920.00 on April 5, 2005.

WHEREAS, the parties now desire to amend the Agreement to allow CONSULTANT to provide professional project construction services including construction submittal, shop drawing, RFI review and other construction services as outlined in Exhibit "A-1".

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties agree to amend the Agreement as follows:

1. The first sentence in Subsection 1.1, entitled "Term of Services" is amended to read:

The term of this Agreement shall begin on the date first noted above and specified in Exhibit "A", and shall end on **September 1, 2007**.

2. Section 1, entitled "Services" is amended by adding Exhibits "A-1", which are attached hereto and incorporated by reference herein.
3. Section 2, entitled "Compensation" is amended to add Exhibit "B-1", which are attached hereto and incorporated by reference herein. Section 2 is further amended by adding the following to the end of the Section:

The compensation for the services set forth in Exhibits "A-1" is a "not to exceed" amount. The total maximum amount of compensation to be paid for tasks outlined in Exhibits "B-1" shall be **\$384,255**.

4. The Consultant agrees to maintain and pay for all insurance policies as stated in Section 4, entitled "Insurance Requirements" of the Agreement dated **April 5, 2005**, between **Chong Partners Architecture** and the City of Milpitas. The Consultant shall provide the City with renewal certificates of the current policies upon the expiration of the current policy.

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All other provisions of the Agreement shall remain in full force and effect.  
This Amendment is executed as of the date written above.

APPROVED BY:

CITY OF MILPITAS

CONSULTANT

\_\_\_\_\_  
City Engineer as to content

\_\_\_\_\_  
Geoff Adams, Associate Partner

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
City Attorney as to Form

ATTESTED BY:

\_\_\_\_\_  
City Clerk

**Exhibit A-1  
Scope of Services**

**Midtown East Parking Garage Project  
Construction Administration Services**

**TASK #1: CONSTRUCTION ADMINISTRATION:**

CONSULTANT shall coordinate all of its construction administration services with CITY'S Construction Management (CITY), who will be responsible for the management of the construction project. The CONSULTANT shall provide administrative services as set forth below and pursuant to the General Conditions of the Contract to be awarded by CITY for construction of the project.

CONSULTANT'S responsibility to provide the Contract Administration Services under this Agreement commences with the award of the initial Contract for Construction to the construction contractor and terminates at the conclusion of the warranty/guarantee periods for the contractor's work.

CONSULTANT shall be a representative of and shall advise and consult with the CITY during the provision of the Contract Administration Services. The CONSULTANT shall have the authority to act on behalf of the CITY only to the extent provided in this Agreement or any properly executed amendment to this Agreement. CONSULTANT's services are for the sole benefit of CITY. During all communications and other services being provided under this Agreement, CONSULTANT shall be the City's representative and fully represent the City's interests against the interests of others (including Consultant and its subconsultants). Duties, responsibilities and limitations of authority of the CONSULTANT under this Section shall not be restricted, modified or extended without written agreement of the CITY and CONSULTANT.

**1) Respond To RFI's:**

CONSULTANT shall review all requests by the Contractor for additional information about the Contract Documents. A properly prepared request for additional information ("RFI") about the Contract Documents shall be in a form prepared or approved by the CONSULTANT conforming to the requirements of the construction specifications and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. CONSULTANT shall respond in writing to all RFI's within nine (9) work days upon receipt, and if the RFI requires a quicker response due to the RFI's effect on the construction, then the City's Project Manager (Construction Manager) shall designate an earlier deadline for response (but no sooner than 72 hours after the RFI is delivered or faxed to Consultant) and CONSULTANT shall timely respond. Such expedited RFI's shall not exceed 5% of total RFI's, unless the RFI's are to correct errors and omissions in the design. For each work day beyond the 9 work days, or earlier deadline as may be requested by the City Project Manager, that CONSULTANT fails to timely respond to an RFI, CONSULTANT shall owe \$1,000 per day to the CITY as liquidated damages for the costs to the CITY caused by the delay in response; the CITY shall have the right to withhold any such liquidated damages from any payments to CONSULTANT. The CITY understands that up to 5% of RFIs may require up to a maximum of 15 work days before they are considered delayed. If deemed appropriate by the CONSULTANT and upon CITY'S approval, the CONSULTANT shall on the CITY'S behalf, prepare, reproduce and distribute supplemental specific Drawings or

Specifications in response to requests for information by the Contractor. If the CONSULTANT's response to an RFI leads to inconsistencies with, and/or errors or omissions in, other parts of the design, plans and/or specifications, then CONSULTANT shall refer to those inconsistencies in the RFI response. Should the number of RFI responses be high enough that it would likely lead to confusion or misunderstanding by the contractor, then CITY may require CONSULTANT to prepare updated plans and/or specifications that incorporate the RFI responses and eliminate the inconsistencies, errors and omissions.

CONSULTANT shall interpret matters concerning performance of the Contractor under, and requirements of, the Contract Documents on written request of either the CITY or Contractor. The CONSULTANT'S response to such requests shall be made to CITY in writing within the time limits agreed upon or otherwise with reasonable promptness. Upon CITY'S approval, CONSULTANT shall deliver the response to the Contractor. Interpretations and decisions of the CONSULTANT shall be consistent with the intent of and reasonably inferable from the Contract Documents. However, the CITY shall make the final determination regarding all such matters.

## **2) Review Submittals, Progress Payments, & Contract Change Orders:**

The CONSULTANT shall review, approve, or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data Mock Ups and Samples, for the purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The CONSULTANT shall respond in writing to submittals, upon receipt within fifteen (15) work days or less as indicated on submittal schedule. Responses to resubmittals, upon receipt, shall be reviewed within a maximum of five (5) work days. CONSULTANT'S review and action on such submittals shall not relieve or diminish the Contractor's primary responsibility.

The CONSULTANT shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents. If in the event that professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the CONSULTANT shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the CONSULTANT. The CONSULTANT shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

Up to two (2) reviews of each Shop Drawing, Product Data item, progress schedules, sample and similar submittal to the Contractor are anticipated.

Review and recommend progress payments.

The CONSULTANT shall assist the CITY'S Project Manger in the preparation of Change Orders and Construction Change Directives for the CITY'S approval and execution in accordance with the Contract Documents. If necessary, the CONSULTANT shall prepare, submit to CITY for approval, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified, as provided in this Section.

The CONSULTANT shall review properly prepared, timely requests by the CITY or Contractor for changes in the Work, including adjustments to the Contract price or time of completion. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the CONSULTANT to make a reasonable recommendation to CITY without extensive investigation or preparation of additional drawings or specifications. If the CONSULTANT determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, the CONSULTANT may recommend to the CITY that the requested change be denied.

If the CONSULTANT determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the CONSULTANT shall make a recommendation to the CITY, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the CONSULTANT shall estimate any additional costs attributable to a Change in Services of the CONSULTANT. With the CITY'S approval, the CONSULTANT shall incorporate those changes into a Change Order or other appropriate documentation for the CITY'S execution or negotiation with the Contractor.

The CONSULTANT shall maintain all records relative to changes in the Work. Upon completion, CONSULTANT shall provide copies of the updated electronic documents to the Contractor, who will use their record documents to incorporate all modifications to the as-built documents per this Agreement.

### **3) Meetings & Site Visits**

Up to 58 visits to the site (assuming a minimum of one per week); and bi-weekly for structural through completion of frame and decks (estimated at 16 visits total); and six meetings each are included for civil, mechanical and electrical; and two meetings for landscape are included by the CONSULTANT over the duration of the Project during construction. CONSULTANT shall provide site observation reports for each site visit. Weekly meetings/site visits for both construction projects concurrently are included in this phase for architectural (58 total) and bi-weekly for structural through completion of the frame and decks (16 total). Six meetings each are included for civil, mechanical and electrical; two meetings for landscape.

CONSULTANT will visit the site to observe portions of the Work to determine whether such portions of the Work are substantially complete in accordance with the requirements of the Contract Documents. CONSULTANT shall visit the site an additional two (2) times to prepare and track the punch list, and to determine final completion.

Up to one (1) additional site visit for observation for any portion of the Work to determine final completion, and the provision of punch list items once Contractor, with approval of the CITY, has determined the Project is completed.

CONSULTANT shall visit the site at intervals appropriate to the stage of the Contractor's operations and coordinate visits with the CITY'S Project Manager (Construction Management), or as otherwise agreed by the CITY, and the CONSULTANT in order:

- a. To become generally familiar with and to keep the CITY informed about the progress and quality of the portion of the Work completed.

- b. To notify the CITY of observed defects and deficiencies in the Work, and,
- c. To determine in general if the visually observable Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents.

The CONSULTANT shall report to the CITY known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor.

The CONSULTANT shall at all times have access to the Work wherever it is in preparation or progress.

The CONSULTANT shall advise the CITY if the CONSULTANT identifies work that does not conform to the Contract Documents.

#### **TASK #2: Project Completion/Close Out, Record Documents:**

CONSULTANT shall review contractor-supplied operation and maintenance manuals and provide copies to City where necessary, i.e. fire alarm and elevator, and compile certifications where necessary.

CONSULTANT shall review contractor warranties.

CONSULTANT shall keep its own set of complete and accurate As-Built Drawings based upon information accumulated from site visits, authorized design changes, contract change orders, and other approved changes to the design.

Prior to acceptance of the Project by the City, CONSULTANT shall provide a complete Record Drawing set, based upon information provided by the CITY, the CONSULTANT's own As-Built drawings, and the Contractor's As-Built redline drawings submitted to CITY at project close-out.

The Consultant shall submit one bound full-size paper set of Record Drawing set to CITY for review and approval prior to final. The final Record Drawing set submitted to CITY shall be printed on mylar, along with a complete set of the drawings in electronic format on CD-ROM.

The CONSULTANT shall sign the final Record Drawing set indicating it has reviewed and drafted the drawings for accuracy and completeness. The initial Record Drawing submittal shall be due to CITY within 30-days after project completion.

Ten (10) months after the issuance of Certificate of Occupancy, CONSULTANT shall perform a comprehensive review of the work subject to each warranty and guarantee. CONSULTANT shall timely report any defective materials or workmanship to the City so that the City may make timely demand to the contractor to repair the defects.

Assist in project close-out; review final payment request, issue Certificate of Substantial Completion

The CONSULTANT shall conduct observations to determine the actual date of final completion; shall receive from the Contractor, and forward to the CITY for the

CITY'S review and records, written warranties, operations and maintenance manuals, as-built documents, and related documents required by the Contract Documents and assembled by the Contractor; and shall issue a Final Certificate for Payment based upon a final observation indicating the Work complies with the requirements of the Contract Documents.

The CONSULTANT'S observation for Final Completion shall be conducted with the CITY'S Project Manager or Project Management Consultant to check conformance of the Work with the requirements of the Contract Documents package and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected. During CONSULTANT's observations for determination of Final Completion, the CONSULTANT shall inform the CITY about the balance of the Contract Sum remaining to be paid the Contractor, including any amounts needed to pay for final completion or correction of the Work.

The CONSULTANT shall request that the Contractor and its designated subcontractors meet with the CITY or the CITY'S Designated Representative before or promptly after occupancy to review the facility operation services, such as HVAC, electrical and any other building systems. The CONSULTANT and its subconsultants shall attend the meeting.

The following Design and Contract Administration Services, if requested by CITY, shall be provided by the CONSULTANT as an Additional Service:

1. Evaluation of modifications submitted by the CITY;
2. Evaluation of substitutions proposed by the CITY and making subsequent revisions.
3. Construction schedule exceeding twelve (12) months. If the construction period exceeds twelve months, CONSULTANT shall be compensated at the rate of \$30,000 per month or a pro rata share of this exceeded period.

## Compensation

Milpitas East Parking Structure  
Project Number: 05022.00

### CA Fee Proposal

#### Task #1

##### Construction Administration

Item #1	Respond to RFIs	169,055
	Review Submittal, Progress	
	Payments, & Contract Change	
Item #2	Orders	112,700
Item #3	Meetings & Site Visits	84,500

#### Task #2

##### Project Completion/Close Out, Record Documents

Project Completion/Close Out, Record Documents	18,000
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<b>Total Not To Exceed Amount</b>	<b>\$384,255</b>
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The fee breakdowns are estimated. Consultant may shift allocation of budget among tasks.

CONSULTANT shall, during the term of this AGREEMENT, invoice CITY every four weeks for services performed under this AGREEMENT during the previous four-week period. Providing the services covered by the invoice have been completed in accordance with the provisions of this AGREEMENT, CITY shall pay CONSULTANT the amount shown on the invoice within thirty (30) days of receipt of the invoice.

The monthly invoice shall describe the topics and tasks completed during by consultant and subconsultants. The invoice shall list the hours expended with personnel charge rates, and reimbursable expenses. A budget summary shall be included on the front page of the invoice and shall show the total budget amount, total amount billed to date, and the budget balance. A spreadsheet (attached) shall be used to record the monthly invoices and shall be attached to each invoice.



PO NO:

[illegible]